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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,820	06/07/2001	Avinash Jain	010296	1176

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Qualcomm Incorporated  
Patents Department  
5775 Morehouse Drive  
San Diego, CA 92121-1714

EXAMINER
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LEE, ANDREW CHUNG CHEUNG

ART UNIT	PAPER NUMBER
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2664

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/877,820	<b>Applicant(s)</b> JAIN ET AL.	
	<b>Examiner</b> Andrew C Lee	<b>Art Unit</b> 2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>Nov 13, 2002</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

- Fig. 5B (sheet 6/9 of Drawings), element 314, CB2 is a typo.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 – 9, 13 – 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Bark et al. (U.S. Patent No. 6553235 B2).

Regarding Claims 1, 13, Bark et al. discloses the limitation of a method to determine a next data rate in a mobile station of a wireless system (Fig. 5, column 4, lines 11 – 14), comprising: receiving a congestion indicator (column 4, lines 18 – 20); and generating the next data rate as a function of data rate history and congestion indicator history (Fig. 5B, column 5, lines 45 – 59).

Regarding Claims 2, 14, Bark et al. discloses the limitation of a method as in claimed wherein generating the next data rate further (Fig. 5, column 4, lines 11 – 14) comprises: comparing at least one previous data rate to a target data rate for the mobile station (column 9, claim 3, lines 33 – 34); and in response to a first result of comparing determining the next data rate by adjusting at least one data rate (column 9, lines 35 – 37).

Regarding Claim 3, Bark et al. discloses the limitation of a method of claimed wherein adjusting the at least one previous data rate performs a statistical analysis (Fig. 5B, column 5, lines 51 – 55).

Regarding Claims 4, 15, Bark et al. discloses the limitation of a method of claimed wherein generating the next data rate further comprises: counting a number of consecutive same value congestion indicators (Fig. 4, element P1, column 5, lines 1 – 3); and if the number of consecutive same value congestion indicators is less than a predetermined maximum number (column 5, lines 4 – 6), determining the next data rate by maintaining the at least one previous data rate (column 5, lines 49 – 58).

Regarding Claims 5, 16, Bark et al. discloses the limitation of a method as in claimed wherein generating the next data rate further comprises: if the number of consecutive same value congestion indicators is equal to or greater than the maximum

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number (column 6, lines 19 – 20), determining the next data rate by adjusting the at least one previous data rate (column 5, lines 49 – 58).

Regarding Claim 6, Bark et al. discloses the limitation of a method as in claimed wherein for a first congestion condition if the previous data rate is greater than the target data rate, adjusting comprises decreasing (column 5, lines 6 – 8; lines 49 – 58).

Regarding Claim 7, Bark et al. discloses the limitation of a method as in claimed wherein for a second congestion condition if the previous data rate is less than the target data rate, adjusting comprises increasing (column 5, lines 4 – 6; lines 49 – 58).

Regarding Claim 8, Bark et al. discloses the limitation of a method as in claimed wherein the next data rate is generated at the mobile station and is independent of other mobile stations (column 4, lines 7 – 10; column 5, lines 43 – 45).

Regarding Claim 9, Bark et al. discloses the limitation of a method as in claimed wherein the maximum number is predetermined (column 4, lines 47 – 51).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Bark et al. (U.S. Patent No. 6553235 B2) in view of Gilhousen et al. (U.S. Patent No. 5603096).

Regarding Claim 10, Bark et al. discloses the limitation of a method to determine a next data rate in a mobile station of a wireless system (Fig. 5, column 4, lines 11 – 14). Bark et al. does not disclose expressly the method as in claimed wherein the congestion indicator comprises multiple bits. Gilhousen et al. discloses the limitation of the method as in claimed wherein the congestion indicator comprises multiple bits (column 5, lines 17 – 25). It would have been obvious to modify Bark et al. to include a method as in claimed wherein the congestion indicator comprises multiple bits such as that taught by Gilhousen et al. in order to provide a power and congestion control scheme that enables the mobile to operate using a 100% duty cycle while providing fast and accurate closed loop power control from the base station to the mobile unit.

Regarding Claim 11, Bark et al. discloses the limitation of a method to determine a next data rate in a mobile station of a wireless system (Fig. 5, column 4, lines 11 – 14). Bark et al. does not disclose expressly a method as in claimed 10, wherein at least one of the multiple bits corresponds to a adjustment indicator, and at least one of the multiple bits corresponds a target indicator, the method further comprising: for a first value of the target indicator, adjusting at least one previous data rate according to the

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adjustment indicator; and for a second value of the target indicator, comparing at least one previous data rate to a target rate for the mobile station, wherein in response to a first result of comparing determining the next data rate by adjusting at least one previous data rate according to the adjustment indicator. Gilhousen et al. discloses the limitation of a method as in claimed 10, wherein at least one of the multiple bits corresponds to a adjustment indicator (column 5, lines 17 – 19), and at least one of the multiple bits corresponds a target indicator (column 2, lines 64 – 67; column 3, lines 1 – 3), the method further comprising: for a first value of the target indicator, adjusting at least one previous data rate according to the adjustment indicator (column 5, lines 19 – 22; column 6, lines 33 – 46); and for a second value of the target indicator, comparing at least one previous data rate to a target rate for the mobile station (column 7, lines 33 – 35), wherein in response to a first result of comparing determining the next data rate by adjusting at least one previous data rate according to the adjustment indicator (column 7, lines 35 – 45). It would have been obvious to modify Bark et al. to include a method as in claimed 10, wherein at least one of the multiple bits corresponds to a adjustment indicator, and at least one of the multiple bits corresponds a target indicator , the method further comprising: for a first value of the target indicator, adjusting at least one previous data rate according to the adjustment indicator ; and for a second value of the target indicator, comparing at least one previous data rate to a target rate for the mobile station, wherein in response to a first result of comparing determining the next data rate by adjusting at least one previous data rate according to the adjustment indicator such as that taught by Gilhousen et al. in order to provide a power and congestion control

scheme that enables the mobile to operate using a 100% duty cycle while providing fast and accurate closed loop power control from the base station to the mobile unit.

Regarding Claim 12, Bark et al. discloses the limitation of a method to determine a next data rate in a mobile station of a wireless system (Fig. 5, column 4, lines 11 – 14). Bark et al. does not disclose expressly a method as in claimed 11, wherein for a first value of the adjustment indicator adjusting at least one previous data rate according to the adjustment indicator comprises increasing at least one previous data rate, and wherein for a second value of the adjustment indicator adjusting at least one previous data rate according to the adjustment indicator comprises decreasing at least one previous data rate. Gilhousen et al. discloses the limitation of a method as in claimed 11, wherein for a first value of the adjustment indicator adjusting at least one previous data rate according to the adjustment indicator comprises increasing at least one previous data rate (column 7, lines 18 – 25), and wherein for a second value of the adjustment indicator adjusting at least one previous data rate according to the adjustment indicator comprises decreasing at least one previous data rate (column 7, lines 26 – 32). It would have been obvious to modify Bark et al. to include a method as in claimed 11, wherein for a first value of the adjustment indicator adjusting at least one previous data rate according to the adjustment indicator comprises increasing at least one previous data rate, and wherein for a second value of the adjustment indicator adjusting at least one previous data rate according to the adjustment indicator comprises decreasing at least one previous data rate such as that taught by Gilhousen

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et al. in order to provide a power and congestion control scheme that enables the mobile to operate using a 100% duty cycle while providing fast and accurate closed loop power control from the base station to the mobile unit.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (703) 305-8086 whose telephone number is (703) 305-8086. The examiner can normally be reached on Monday through Friday from 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (703) 305-4366. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).